

REC-115  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

Tri-K Cylinder Service, Inc.  
Springfield, Michigan

Respondent

'99 AUG 13 P2:55  
CAA-5-99-026  
DOCKET No.  
7180  
REGION 5

**ADMINISTRATIVE COMPLAINT**

1. This is an Administrative Complaint for the assessment of a civil penalty brought pursuant to Section 113(d) of the Clean Air Act ("Act"), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Tri-K Cylinder Service, Inc., ("Tri-K") a corporation doing business in the State of Michigan.

**REGULATORY BACKGROUND**

4. Pursuant to Section 112(b) of the Clean Air Act, 42 U.S.C. § 7412(b), on January 25, 1995. 60 FR 4963 the U.S. EPA promulgated the National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, 40 CFR Part 63 Subpart N 60 Fed. Reg. 4963.

5. The Chrome Plating NESHAP applies to each "affected source," as defined in 40 CFR Section 63.340(a), including hard chromium

electroplating tanks.

6. 40 C.F.R. Section 63.347(c)(1) requires each owner or operator of an affected source that has an initial startup before January 25, 1995 to notify the Administrator in writing that the source is subject no later than July 25, 1995.

7. 40 C.F.R. Section 63.342(f)(3)(i) requires each owner or operator of an affected source subject to the applicable work practice requirements to prepare a facility operation and maintenance plan which specifies the operation and maintenance criteria for the affected source, add-on pollution control devices, and monitoring equipment.

8. 40 C.F.R. Section 63.343(b)(1) requires each owner or operator of an affected source, subject to the requirements of the Chrome Plating NESHAP, to perform an initial performance test as required under 40 CFR § 63.7, using the procedures and test methods listed in Sections 63.7 and 63.344.

#### **GENERAL ALLEGATIONS**

9. Tri-K is a "person" as defined at 42 U.S.C. § 7602.

10. Tri-k owns and operates two hard chrome electroplating tanks at its facility located in Springfield, Michigan.

11. Tri-K's primary business is hard chrome plating parts.

12. Tri-K's hard chrome electroplating tanks are defined as "affected sources" under 40 CFR §63.340(a), and the provisions of the Chrome Plating NESHAP apply to these sources.

**COUNT I**

13. Paragraphs 1 through 12 are incorporated herein by reference.

14. The two hard chrome electroplating tanks were installed in the early 1980's without a permit to install.

15. On July 27, 1997, Tri-K applied to the Michigan Department of Environmental Quality (MDEQ) for a permit to install the two hard chrome plating tanks at it's Springfield facility. Up to the date of the permit application MDEQ was not aware of the existence of Tri-K.

17. At the time of the permit to install application, Tri-K notified MDEQ that the two chrome tanks were subject to the chrome NESHAP.

18. Respondent's failure to notify the Administrator that the two chrome plating tanks were subject to the chrome plating NESHAP by July 25, 1995 is a violation of 40 C.F.R. Section 63.347(c)(1).

**COUNT II**

19. Paragraphs 1 through 18 are incorporated herein by reference.

20. On February 18, 1998, Tri-K applied to U.S. EPA, Region 5, for a waiver of the performance test requirements of the chrome NESHAP.

21. On January 16, 1998, MDEQ conducted an inspection of the Tri-K facility. Based on MDEQ's findings at the time of the inspection, Tri-K had not performed the initial performance test.

22. On March 18, 1998, U.S. EPA, Region 5, denied Tri-K's application to waive the testing requirements of the chrome NESHAP.

23. Pursuant to 40 C.F.R. §63.343(b)(1), Tri-K was required to conduct the initial performance test by July 24, 1997.

24. Tri-K conducted its initial performance test on January 15, 1999.

25. Tri-K failed to conduct the initial performance test by July 24, 1997 in violation of 40 C.F.R. Section 63.343(b)(1).

**COUNT III**

26. Paragraphs 1 through 25 are incorporated herein by reference.

27. Pursuant to 40 C.F.R. Section 63.342(f)(3)(i), Tri-K was required to prepare an operation and maintenance plan for its electroplating tanks by July 27, 1997.

28. Tri-K prepared an operation and maintenance plan on or around the date of the stack test (January 15, 1999).

29. Tri-K failed to prepare an operating plan for the two electroplating tanks by July 27, 1997 in violation of 40 C.F.R. Section 63.342(f)(3)(i).

**PROPOSED CIVIL PENALTY**

30. The Administrator of U.S. EPA may assess a civil penalty not to exceed \$27,500 per day of violation up to a total of \$220,000 for violations of requirements under the Act that occurred on or after January 31, 1997 and \$25,000 per day of violation up to a total of \$200,000 for violations of requirements under the Act that occurred before January 31, 1997, according to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

31. Under Section 113(e) of the Act, 42 U.S.C. § 7413(e), the Administrator of U.S. EPA must consider the following factors when assessing an administrative penalty under Section 113(d):

- a. the size of Respondent's business;

- b. the economic impact of the proposed penalty on Respondent's business;
- c. Respondent's full compliance history and good faith efforts to comply;
- d. the duration of the violations alleged in the Complaint as established by any credible evidence;
- e. Respondent's payment of penalties previously assessed for the same violations;
- f. the economic benefit of noncompliance;
- g. the seriousness of the violations; and
- h. such other factors as justice may require.

32. Based upon the facts alleged in this Complaint and the factors in paragraph 31, above, Complainant proposes to assess a civil penalty of \$4,000 against Respondent. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991, (penalty policy). Enclosed with this Complaint is a copy of the penalty policy.

33. In evaluating the seriousness of the violation, Complainant considered the importance of the recordkeeping and testing requirements to achieving the goals of the Act and its implementing regulations. These regulations are very important to the regulatory scheme of the Act because they are intended to limit the release of chromium, an extremely hazardous air pollutant. Accordingly, the proposed penalty includes a component corresponding to the importance of these violations to the regulatory scheme.

34. In determining the proposed penalty, Complainant considered the economic benefit that the Respondent received from the violations. The

penalty must be sufficient to prevent the violator from gaining monetary benefit from avoiding or delaying the expenditures that are necessary to comply. Because the subject violations involved only nominal economic benefit to the Respondent, Complainant did not include an economic benefit component in the proposed penalty.

35. In assessing the proposed penalty, U.S. EPA considered the actual or possible harm resulting from the alleged violations. Chromium, the pollutant of concern, is listed as a toxic air pollutant in Section 112(b)(1) of the Act. However, the Complaint does not allege that Tri-K violated an emission standard for chromium. Accordingly, this proposed penalty does not include a component corresponding to the potential harm from emitting chromium.

36. Complainant considered the duration of the violations in assessing the actual or possible harm resulting from such violations. The violations commenced in July 1997, and continued through January 1999. Thus, Complainant based the penalty on a 24 month duration of violations.

37. In calculating the proposed penalty, Complainant considered the size of Respondent's business in determining the appropriate penalty. Tri-K's net worth is less than \$100,000. Accordingly, the proposed penalty includes a component based on the size of Tri-K's business.

38. Complainant considered Respondent's compliance history and its good faith efforts to comply. Because Complainant does not know of any prior citations against Respondent for violating environmental laws, Complainant has not increased the proposed penalty based on this factor.

39. Complainant considered the economic impact of the penalty on Respondent's business. Based on the best information available to Complainant at this time, the proposed penalty reflects a current presumption of Respondent's ability to pay the penalty and to continue in business.

40. Complainant developed the penalty proposed in this Complaint based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bonafide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

39. The Respondent may pay the penalty by certified or cashier's check, payable to "Treasurer, the United States of America", by delivering the check to:

United States Environmental Protection Agency, Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

Respondent must include the name of the case and the docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and the transmittal letter to:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

and

James Morris  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

40. The Administrator of U.S. EPA must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing to contest any material fact alleged in the Complaint and to contest the appropriateness of the proposed penalty. To request a hearing, Respondent must specifically make the request in its Answer, as discussed in paragraphs 41 through 46, below. If Respondent requests a hearing, U.S. EPA will hold the hearing and conduct it according to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

**ANSWER**

41. To avoid being found in default, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk, (R-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within 30 calendar days after receiving the Complaint. In counting the 30-day time period, the actual date of receipt is not included; Saturdays, Sundays and federal legal holidays are included. If the 30-day time period expires on a Saturday, Sunday or federal legal holiday, the time period extends to the next business day.

42. Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation.



Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

43. Respondent's failure to admit, deny or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

44. Respondent's Answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent intends to place at issue; and
- c. whether Respondent requests a hearing as discussed in paragraph 40, above.

45. Respondent must send a copy of the Answer and any documents subsequently filed in this action to James Morris, Associate Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Mr. Morris at (312) 886-6632.

46. If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Administrator of U.S. EPA may issue a default order, after motion, under 40 C.F.R. § 22.17(a). Default by Respondent constitutes an admission of all factual allegations made in the Complaint and a waiver of the right to a hearing. The proposed penalty will be due without further proceedings 60 days after a default order becomes the final order of the Administrator under 40 C.F.R. § 22.27 or § 22.31.

#### **SETTLEMENT CONFERENCE**

47. Whether or not Respondent requests a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Spiros Bourgikos,

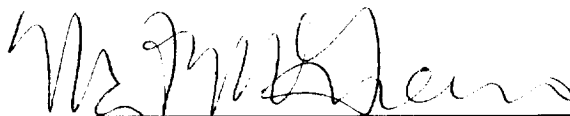
Air Enforcement and Compliance Assurance Branch (AE-17J), Air and Radiation Division, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Mr. Bourgikos at (312) 886-6862.

48. Respondent's request for a settlement conference does not extend the 30 calendar day period to file a written Answer to this Complaint. Respondent may pursue simultaneously the settlement conference and adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold a conference.

**CONTINUING OBLIGATION TO COMPLY**

49. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable Federal, State, or local law.

8/12/99  
Date

  
Margaret M. Guerriero,  
Acting Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**CAA-5-99-025**

CERTIFICATE OF SERVICE

**AUG 13 1999**

I certify that on \_\_\_\_\_, I deposited the U.S. Mail, certified mail, return receipt requested, a copy of the foregoing Administrative Complaint, the Part 22 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, and a copy of the Penalty Policy (described in the Complaint) addressed to the following Respondent:

Kurk A. Sparks, President  
Tri-K Cylinder Service Inc.  
4539 Wayne Road  
Springfield, Michigan 49015

Certified Mail Number: \_\_\_\_\_

**P140 777039**

I certify that copies of the Clean Air Act Administrative Complaint for penalties was sent by first class mail to:

Barbara Rosenbaum, Supervisor  
Compliance and Enforcement Section  
Air Quality Division  
Michigan Department of Environmental Quality  
P.O. Box 30260  
Lansing, Michigan 48909-7760

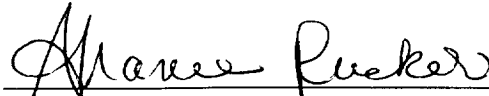
and

Wendy Barrott, Director  
Wayne County Air Quality Management  
Department of Environment  
640 Temple  
Suite 700  
Detroit, Michigan 48201

I certify that a copy of the Clean Air Act Administrative Complaint for penalties was hand-delivered to:

Regional Hearing Clerk  
77 West Jackson Boulevard  
Chicago, Illinois 60604

8-13-99  
Date

  
Shanee Rucker, Secretary  
AECAS (MI/WI)

**CAA-5-99-025**